IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 209 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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MALBAR INVESTMENT PVT. LTD.

Versus

COMMISSIONER OF INCOME-TAX

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Appearance:

1. INCOME TAX REFERENCE No. 209 of 1992

MR RK PATEL for Petitioner

MR AKIL KURESHI with MR MANISH R BHATT for Respondent

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CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 16/10/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE D.A.MEHTA)

The Income-tax Appellate Tribunal has referred

the following question under Section 256(1) of the Income-tax Act, 1961 for the opinion of this Court at the instance of the revenue :-

"Whether, on the facts and in the circumstances of the case, the Tribunal is right in law in holding that the Income-tax Officer was justified in passing order u/s. 104 of the Income-tax Act and thereby levying an additional tax ?"

2. The assessment year involved is 1977-78. We have heard Mr RK Patel for the applicant-assessee and Mr Akil Kureshi for the revenue. It was fairly pointed out by Mr Patel that the controversy raised by the question referred in this reference stands answered against the assessee by the decision of this Court rendered on 2.2.1999 in Income-tax Reference No. 151 of 1984 in case of Ranoli Investment (P) Ltd. vs. CIT. For the reasons stated in the aforesaid decision, we hold that the Tribunal was right in law in coming to the conclusion that the Income-tax officer had rightly passed order under Section 104 of the Act and thereby levied additional tax under the said provision. The question referred to us is, therefore, answered in the affirmative i.e. in favour of the revenue and against the assessee.

3. The reference stands disposed of accordingly with no order as to costs.

(M.S. Shah, J.)

(D.A. Mehta, J.)

sundar/-